



New Orleans Office

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July 24, 2018

Via Email

Ms. Stacy J. Guidry
Section Chief, Health Plan Management
State of Louisiana
Department of Health
P. O. Box 91030
Baton Rouge, LA 70821

Re: Notice of Monetary Penalty Regarding the Updating of Provider Directories
Our File No. 41728

Dear Ms. Guidry:

Your correspondence, dated June 25, 2018, addressed to Mr. Jamie Schlottman, CEO of Louisiana Healthcare Connections, Inc. ("LHCC"), regarding "Notice of Monetary Penalty Regarding the Updating of Provider Directories" has been forwarded to us for response. A copy of your letter is attached hereto for your convenience and is marked as **Exhibit 1**. Please accept this correspondence as LHCC's appeal of the monetary penalty set forth in your letter.

In your correspondence, you state that the LDH found that 35.8% of sampled LHCC provider directory information was inaccurate. However, LDH's surveys are statistically insignificant and unreliable and fall below the standards set forth in the LDH/LHCC contract.

As you correctly state, the contract between LHCC and the Louisiana Department of Health ("LDH") provides, in part, as follows:

7.19 Provider Directory

7.19.1. The MCO shall maintain accurate provider directory data. LDH shall conduct periodic audits to verify the accuracy of the MCO's provider directory data. The MCO shall maintain an accuracy rate of at least 90%.

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LDH's surveys (cited in Exhibit 1) have unreasonably small sample sizes and yielded unreliable results. LHCC has contracted with thousands of providers in nearly every parish in Louisiana. However, LDH's surveys only included twenty (20) providers in only five (5) of Louisiana's sixty-four (64) parishes. Furthermore, LDH has not disclosed its method for selection of these providers or parishes or the particulars around how the survey was conducted. Nor has LDH provided any reasoning behind the organization and sizes of the data sets, including the lumping of all non-behavioral specialists into a single category from which only four (4) providers were audited.

The Supreme Court of the United States has recognized that a small sample size may detract from the value of statistical evidence. *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20, 97 S. Ct. 1843, 1856 (1977). *See also Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 994, 108 S. Ct. 2777, 2790 (1988) *in part superseded by statute* (an example of weakness in statistical evidence is small data set).

Federal courts, including the Fifth Circuit, have likewise cautioned against the use of statistics involving small sample sizes. *See Stout v. Potter*, 276 F.3d 1118, 1123 n.2 (9th Cir. 2002) ("Statistics are not trustworthy when minor numerical variations produce significant percentage fluctuations") (citation omitted); *Coleman v. Exxon Chem. Corp.*, 162 F. Supp. 2d 593, 618 (S.D. Tex. 2001) ("The Fifth Circuit has cautioned against the use of statistics involving small sample sizes. The reason for [the] hesitance is obvious: the smaller the sample size, the greater the likelihood that the underrepresentation reflects chance . . .") (citations and internal quotations omitted); *Kelley v. American Heyer-Schulte Corp.*, 957 F. Supp. 873, 880 n.8 (W.D. Tex. 1997) (finding that an expert could not reasonably rely on a study, which had a small sample size, and stating "[a]dequacy of a sample size is an important consideration in assessing the validity of a study").

Furthermore, LDH's limited surveys fall below the standards set forth in the LDH/LHCC contract itself. The 90% accuracy rate required under Sections 7.19.1 and 20.3.3 clearly pertain to the entire Provider Directory. *See* Section 20.3.4.1 (reports "must contain 100% of the MCO's data"). Nothing in the contract permits the imposition of monetary penalties based on a sample of a fraction of a percent of LHCC's providers – much less a statistically insignificant and unscientifically selected data set.

In addition, it is our understanding that at least some providers – or agents thereof – may have given LHCC and/or the LDH "secret shoppers" incorrect information. To the extent that such misinformation affected the LDH survey results, LHCC should not be penalized for the actions of others. If LDH refuses to rescind its monetary penalty, LHCC will have no alternative other than to exercise its contractual and legal rights against those providers that submitted incorrect information to LHCC and/or were not accurate in responding to LDH's survey questions or both. Such actions taken against the providers will include monetary penalties and/or termination.

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LHCC currently is in the process of retaining a third party expert for the purpose of analyzing LDH's processes and evaluating the statistic validity of the conclusions drawn from your surveys. We respectfully request that LDH make it representatives available to our expert relating to survey processes so that it can complete its work in the most expeditious and accurate manner as possible. LHCC is also amenable to working with LDH in relation to how future surveys are conducted.

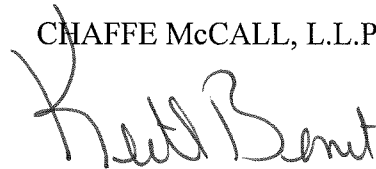
Finally, you mentioned in your correspondence that the monetary penalty would be "retained from the next monthly per member per month (PMPM) payment made to LHCC". **Please see attached Exhibit 1.** Even if such a penalty were appropriate, which we dispute, the retention of the penalty amount is not in compliance with the LDH\LHCC contract, in particular Section 21.5.1 which provides that the payment is due and payable within thirty (30) calendar days after the MCO's receipt of the notice of penalty, and a LDH PMPM retention only would be applicable if LHCC failed to pay the assessment timely.

In light of the foregoing, we respectfully request that the monetary penalty imposed in this matter be rescinded. Otherwise, we will contact you concerning our expert's need for LDH cooperation.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

CHAFFE McCALL, L.L.P.



Keith M. Benit

Attachments

cc: James E. Schlottman (*via email*)
Kendra M. Case
(with attachments)



State of Louisiana
Louisiana Department of Health
Bureau of Health Services Financing

VIA E-MAIL ONLY

June 25, 2018

Mr. Jamie Schlottman, CEO
Louisiana Healthcare Connections
8585 Archives Avenue, 3rd Floor
Baton Rouge, LA 70809

RE: Notice of Monetary Penalty Regarding the Updating of Provider Directories

Dear Jamie:

Louisiana Healthcare Connections (LHCC) has failed to validate provider directory data to ensure accurate data is on file for all contracted providers. The contract between LHCC and the Louisiana Department of Health (LDH) provides:

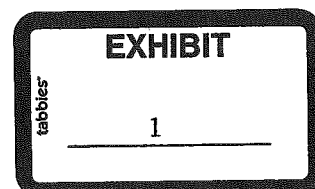
7.19 Provider Directory

7.19.1. The MCO shall maintain accurate provider directory data. LDH shall conduct periodic audits to verify the accuracy of the MCO's provider directory data. The MCO shall maintain an accuracy rate of at least 90%.

By letter dated April 30, 2018, LHCC was placed on notice that LDH would be conducting "secret shopper" surveys beginning on May 1, 2018, and that penalties would be enforced for any non-compliance. Each survey was comprised of ten (10) primary care physicians (PCPs), six (6) non-behavioral specialists and four (4) behavioral health providers per parish for a total of five (5) parishes. Of the five (5) parishes selected, two (2) parishes were urban and three (3) were rural. The six (6) non-behavioral health specialists were selected from a variety of specialties. The variety of provider entries contained no duplications.

The surveys revealed that **35.8%** of LHCC's provider directory information sampled was inaccurate. Survey results are attached. The inaccurate items in the survey included some or all of the following:

- Listed phone numbers and addresses are incorrect;
- Providers are not contracted with the MCO at all;
- Providers have limitations not published;



Mr. Jamie Schlottman
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- Providers have moved, retired, or left the group; and
- Hospitalists are published as PCPs.

The accuracy of information in LHCC's provider directory is paramount because it allows patients to know whether their existing provider contracts with the MCO, how to contact providers, and to determine whether a plan's provider network is adequate to meet their healthcare needs. Inaccurate provider data in directories can create a barrier to care and calls into question whether LHCC is meeting requirements for network adequacy.

This violation warrants the assessment of monetary penalties in accordance with Section 20.3 in the Table of Monetary Penalties as provided below, so \$50,000 will be retained from the next monthly per member per month (PMPM) payment made to LHCC. In addition, LHCC shall correct all inaccurate data by July 10, 2018. All corrected data must be evidenced by a "screenshot" of the entry to be considered corrected. Should LHCC fail to correct the provider directory data by July 10, 2018, penalties will accrue at the rate of \$1,000 per calendar day until all corrections have been documented.

Provider Directory	<p>Fifty thousand dollars (\$50,000.00) per audit conducted by LDH wherein the MCO is found to have not maintained an accuracy rate of at least 90%.</p> <p>One thousand dollars (\$1,000) per calendar day for failure to correct inaccurate provider directory data within 14 days of notification by LDH.</p>
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Documentation of data corrections and any questions may be sent to Whitney Martinez (whitney.martinez@la.gov).

Sincerely,



Stacy Guidry
Section Chief, Health Plan Management

SG/lj

Attachment

cc: Whitney Martinez
Jen Steele
Kim Sullivan
Christina Wilson
File #: LHC2-11